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JOHN F. DAVIS, CLERK

No. 491

In the Supreme Court of the United States

OCTOBER TERM, 1964

**CORLISS LAMONT, DOING BUSINESS AS
BASIC PAMPHLETS, APPELLANT**

v.

THE POSTMASTER GENERAL OF THE UNITED STATES

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

ARCHIBALD COX,

*Solicitor General,
Department of Justice,
Washington, D.C., 20530.*

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On November 17, 1964, a three-judge district court in the United States District Court for the Northern District of California, Southern Division, in a case substantially the same as the present case, held (1) that a suit challenging the constitutionality of 39 U.S.C. 4008 was not rendered moot by the postal authorities' releasing the mail that had been detained pursuant thereto; and (2) that the statute is unconstitutional. *Heilberg v. Fixa*, No. 41660. We have been advised that the appellant intends to file with the Court a copy of the opinion in that case.

In view of the direct conflict between that decision and the present case, the government withdraws its

motion to affirm and agrees with appellant that probable jurisdiction should be noted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

NOVEMBER 1964.